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09/717,433	11/20/2000	Lou Leonardo	2043.023US1	9413
49845 7590 09/18/2009 SCHWEGMAN, LUNDBERG & WOESSNER/EBAY P.O. BOX 2938 MINNEAPOLIS, MN 55402				
EXAMINER				
VYAS, ABHISHEK				
ART UNIT		PAPER NUMBER		
3691				
NOTIFICATION DATE		DELIVERY MODE		
09/18/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTO@SLWIP.COM  
request@slwip.com

### Office Action Summary

**Application No.**

09/717,433

**Applicant(s)**

LEONARDO ET AL.

**Examiner**

ABHISHEK VYAS

**Art Unit**

3691

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20, 22-28, 31-34 and 39-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20, 22-28, 31-34 and 39-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-884)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date 06/03/2009.

## **DETAILED ACTION**

### **Status of Claims**

1. This action is in reply to the amendments and remarks filed on 01/27/2009.
2. Claims 1, 15, 22, 26, 28 and 39-42 have been amended.
3. Claims 1-20, 22-28, 31-34 and 39-42 are currently pending and have been examined.
4. Claims 1-20, 22-28, 31-34 and 39-42 are rejected.
5. This is a FINAL rejection.

### ***Response to Arguments***

6. Applicant's arguments regarding the 35 USC 112 first paragraph rejections have been fully considered and they are persuasive. The rejection in the previous office action is withdrawn.
7. Applicant's arguments regarding the 35 USC 101 and 35 USC 103 rejections have been fully considered but they are not persuasive. The rejections are maintained.
8. In response to argument that claims 1-7 are statutory, the examiner respectfully disagrees. The applicant argues that data is transformed into a visual depiction in the user interface communicated to the client machine of the seller and therefore the claim (1) meets the transformation prong of Bilski. The examiner respectfully disagrees. The claim in essence recites "receiving a complaint (interpreted as data), facilitating a resolution of the complaint, determining the complaint is not resolved, updating a record (interpreted as updating or modifying data) and communicating a user interface to a client machine...the user interface including a second count (interpreted as data)" The interface is merely communicating data gathered in the steps of receiving, facilitating and updating (data). No electronic transformation has taken place to convert the data received into a meaningful result (or image). The "communicating a user interface that includes a second count (data)" is not transformation but simply communicating meta-data via an interface. Communicating incremental data via an interface is not considered electronic transformation of data into a visual depiction. Hence the recitation of a user interface

communicating data (gathering data and moving data from one place to another) is interpreted as insignificant extra solution activity in light of the Bilski decision. Therefore the arguments are unpersuasive and the rejection is maintained.

9. A transaction is broadly defined as "any sale, assignment, lease, license, loan, advance, contribution, right, interest, however such transaction is effected, and whether or not the terms are formally documented". As such, a failed transaction occurs whenever a sale or transfer does not complete successfully. The Ojha reference is relied upon for teaching incrementing a count of failed transactions. As cited in the previous Office Action, Ojha teaches a record for a buyer which includes a count of offers reneged by the buyer (column 3 lines 22-43). Applicant argues that because the bid is non-binding, this can not be considered a transaction. Examiner respectfully disagrees. A buyer begins the transaction when he enters a bid for the item even if it is non-binding. Ojha discusses non-binding bidding (column 2 lines 11-24), disclosing that bids are non-binding because the price has not been agreed upon not due to the lack of a commitment to complete the transaction by defaulting on a payment, when the transaction is terminated, as the applicant is arguing. A completion of a non-binding bid would still constitute a complete transaction. Ojha clearly discloses the consequence of a frivolous bid (interpreted as failed transaction) where a buyer's reputation is tracked by his behavior. In part it is a metric that is based upon the number of times a buyer honors the acceptance of a bid (column 3, line 36-37).
10. In response to the arguments that Tal merely track uncured transactions and includes a credit rating system which is in contrast with a system based on the count of failed number of transactions, the examiner disagrees. Even if Tal stores disputes till they are cured, it is not the equivalent of merely tracking uncured transactions. A dispute is stored in a database and indexed by attributes set by the operator so users can decide whether to participate with other users or not. Therefore even though the defaults and disputes are stored for a time till they are cured, the limitation of updating a Record associated with a failed transaction is taught. The time is irrelevant as the scope of the claim does not specifically indicate storage of failed transactions indefinitely,

in contrast to Tal. If the prior art is capable of performing the function, then it meets the claim. Therefore the argument is unpersuasive.

11. In response to the argument that no failed transactions need to have occurred to use the feedback system the examiner respectfully disagrees. It would be obvious to one of ordinary skill to use the feedback system to negatively designate a failed transaction. However, according to the feedback forum (provided as NPL2; but not relied upon in the rejection) the feedback is an aggregation (count) of points accumulated due to positive and negative transactions. It is obvious that a failed transaction will not receive a positive feedback. Therefore the cumulative feedback score is indicative of the collection of unfair transactions.
12. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). *Ojha* and *Tal* teach instances of recording the number of times a bid is honored and recording of defaults and disputes. It is also noted that the applicant has not successfully challenged the official notice taken by the examiner in the previous office action and therefore the rejection is maintained. Therefore at this time the request for allowance is respectfully declined.

***Claim Rejections - 35 USC § 101***

13. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

14. Claims 1-7 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

15. Claim 1 recites a process comprising the method steps of receiving submission of a complaint, facilitating a resolution, determining the complaint is not resolved, updating a record, and communicating an interface to a client machine. Based on Supreme Court precedent, a proper process must be tied to another statutory class (machine) or transform underlying subject matter to a different state or thing (*In Re Bilski*; *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876)). Since neither of these requirements is met by the claim, the method is not considered a patent eligible process under 35 U.S.C. 101. To qualify as a statutory process, the claim should positively recite the other statutory class or to which it is tied, for example by identifying the machine that accomplished the method steps or positively reciting the subject matter that is being transformed, for example by identifying the material that is being changed to a different state. Since the steps can be accomplished without the use of another statutory class, it is considered a non-statutory process.
16. Examiner notes that in the claimed steps which recite apparatus may not be involved in the performance of the step central to the claim, and therefore the method may not be specifically tied to that apparatus. For example, "receiving submission of a complaint to the network-based facility" may be broadly interpreted as a facility with a network based operation and a user could potentially submit a complaint manually at such a facility. The facility could further receive the complaint at this facility via a staffed complaint desk or window or station, having an interactive display to convey information related to complaints or transactions.
17. None of the dependant claims 2-7 include features which overcome this rejection, and are therefore rejected for the same reasons.

***Claim Rejections - 35 USC § 103***

18. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

19. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

20. Claims 1, 4, 5, 7, 8, 11, 12, 14, 15, 18, 19, 24, 25, 27, and 28, are rejected under 35 U.S.C. 103(a) as being unpatentable over Vaidyanathan et al, U.S. Patent Application Publication No. 2004/0059596, in view of Ojha et al., U.S. Patent No. 6,598,026, in view of Tal, U.S. Patent No. 6,535,856, and further in view of The Feedback Forum, as viewed on the Wayback Machine from October 12, 1999.

21. Claims 1, 7, 8, 14, 15, 27, 28, Vaidyanathan discloses an automated online dispute resolution system and method comprising receiving a submission of a complaint to a network-based facility (paragraphs 12, 42, and 56), the complaint being related to a failed transaction that is not completed by a party (paragraph 6), facilitating resolution of the complaint (paragraphs 60-63), determining that the complaint is not resolved (paragraphs 65, 69), and updating a record associated with the failed transaction that is not completed by the party (paragraph 11, lines 27-34). Vaidyanathan also teaches the network based facility includes a network-based online auction facility and the transaction includes a network-based online auction transaction (paragraphs 39, 40). Vaidyanathan fails to explicitly teach the updating of the record including incrementing a count of failed transactions not completed by the party.

22. Ojha discloses a system and method for brokering transactions, including the tracking of a buyer's reputation (column 3 lines 22-43). Ojha discusses a reputation metric consisting of the

number of offers honored less the number reneged. According to this embodiment, there exists a count of offers reneged by a buyer, and such a renegeing would constitute a failed transaction not completed by the buyer for the reason that the buyer failed to send payment to the seller. It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the teachings of Vaidyanathan to include the count of failed transactions because Vaidyanathan refers generally to keeping records on past performances of a party in order to maintain the integrity of transactions, and Ojha is in the same field of endeavor, and teaches consequences for not completing transactions.

23. Vaidyanathan and Ojha fail to disclose communicating a user interface to a seller, the user interface including a second count of failed transaction not completed by the buyer, the second count including the first count.
24. Tal discloses a system and method of regulation and enforcement of payment in electronic marketplaces, wherein sellers submit complaints about buyers, including the reason for the complaint (column 5 lines 32-46). The complaints are indexed according to that reason, and are maintained in a database and are available for viewing by other parties. It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the reputation metric system of Ojha to include the dispute reporting system of Tal. Whereas Ojha only explicitly recites tracking bids reneged by a buyer, the resulting system of the combination would track all failed transaction, including non-payment or reneged bids, late-payment, etc, and would index them according to the type of failed transaction. Tal provides motivation for tracking such information (column 1 lines 17-39).
25. Vaidyanathan, Ojha and Tal fail to teach a scoring mechanism for summarizing the various failed transactions.
26. The Feedback Forum teaches a feedback rating, viewable by a seller on a user interface (page 1), in which comments contribute to a score about a user. According to the feedback forum, negative comments are worth -1 point. The comments are summed to determine a total score for a user. It would have been obvious to one of ordinary skill in the art at the time of Applicant's



invention to modify the teachings of Vaidyanathan, Ojha and Tal to include the scoring system of the feedback forum, wherein each failed transaction in the database would receive a -1 point, and the sum of the failed transaction points would be aggregated to for a score, which would represent the count of failed transactions not completed by the buyer. This combination is obvious because Feedback forum provides a scoring system that easy and quickly summarizes the trust worthiness of a user. Ojha and Tal are concerned with maintaining and assessing trustworthiness in electronic commerce. The features were known at the time of Applicant's invention, and the results are predictable.

27. Claims 4, 11, 18, 24, Vaidyanathan teaches providing an interface to facilitate input of information for the complaint (figures 5, 6).
28. Claims 5, 12, 19, 25, Vaidyanathan teaches notifying the party that the complaint has been submitted against the party (paragraph 84).
29. Claims 39-41, are rejected under 35 U.S.C. 103(a) as being unpatentable over Vaidyanathan Ojha et al., and Tal, as applied to claim 1 above and further in view of eBay's Website ([www.ebay.com](http://www.ebay.com)) on October 14, 1999, as viewed on the Wayback Machine ([www.archive.org](http://www.archive.org)), hereinafter "eBay".
30. Claims 39-41, Vaidyanathan, Ojha, Tal, and feedback forum fail to teach a count of failed transactions based on a number of failed transactions not completed by the buyer for the reason that the buyer made a fraudulent payment to the seller. "eBAY" however teaches the limitations of claims 39-42 as follows: The number of offenses is based on a number of incomplete payments or broadly interpreted as failed transactions. It would have been obvious to one of ordinary skill in the art to modify the teachings of Vaidyanathan, Ojha, Tal and Feedback Forum to include a category for fraudulent payments, because fraudulent payments are a known way to default on a payment to someone and therefore being one way of having a failed transaction (page 26). This is a predictable result. Further the "eBAY" page 26 clearly discloses an incomplete sale due to non-payment by bidder and therefore the bidder faces automatic consequences such as warnings and suspensions based on the number of offenses interpreted as failed transactions.

31. Claim 42, is rejected under 35 U.S.C. 103(a) as being unpatentable over Vaidyanathan Ojha et al., and Tal, as applied to claim 1 above and further in view of Cheng et al United States Patent Application Publication No: 2002/0059130
32. Vaidyanathan, Ojha, Tal and Feedback Forum fail to explicitly disclose an interface including a list of failed transactions. Cheng however discloses the limitation in paragraphs 23, 24, 30, 31, 46, 54 and 57. It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the teachings of Vaidyanathan, Ojha, Tal and eBay to include a summary or detailed transaction history (list) to inquire into the behavior of the buyer or seller. One would be motivated to do so to prevent participation in a financial transaction with a untrustworthy buyer or seller.
33. Claims 2, 3, 6, 9, 10, 13, 16, 17, 20, 22, 23, 26, 31-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vaidyanathan, Ojha, Tal, and feedback forum as applied to claims 1, 4, 5, 7, 8, 11, 12, 14, 15, 18, 19, 24, 25, 27, and 28 above, and further in view of eBay's Website ([www.ebay.com](http://www.ebay.com)) on October 14, 1999, as viewed on the Wayback Machine ([www.archive.org](http://www.archive.org)), hereinafter "eBay".
34. Claims 2, 3, 9, 10, 16, 17, 22, 23, Vaidyanathan, Ojha, Tal, and feedback forum fail to teach facilitating a refund request if the complaint is not resolved, including providing an interface to facilitate input of information for the refund request. eBay teaches facilitating a refund request if the complaint is not resolved (pages 20, 23, 24), including providing an interface to facilitate input of information for the refund request (page 25). It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the teachings of Vaidyanathan, Ojha, Tal, and feedback forum to include the features of eBay because Vaidyanathan teaches using the dispute resolution system to settle disputes stemming from eBay transactions (paragraphs 39, 40).
35. Claims 6, 13, 20, 26, 31, Vaidyanathan, Ojha, Tal, and feedback forum fail to teach determining that the count exceeds a predetermined count value, responsive to the determining, suspending the party from participating in future transactions. eBay teaches taking certain actions based on

the number of non-completed transactions reported (page 26). According to eBay, if a bidder receives one count (first offense), the user receives a warning. If the count is 2, the bidder receives another warning. If the count is 3, the bidder receives another warning, and a 30 day suspension. If the count is 4, the party is suspended from the eBay system indefinitely. Based on this policy description, it is inherent that the eBay system determines if a count exceeds 3, and responsive to this determination, the party is suspended from participating in future transactions. It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the teachings of Vaidyanathan, Ojha, Tal, and feedback forum to include the features of eBay because Vaidyanathan teaches using the dispute resolution system to settle disputes stemming from eBay transactions (paragraphs 39, 40).

36. Claims 32-34. Vaidyanathan, Ojha, Tal, feedback forum, and eBay fail to teach denying an appeal, granting an appeal, and decrementing the count of failed transactions not completed by the party responsive to the granting of the appeal. eBay teaches an appeal process, including receiving an appeal from the party, appealing the penalty for being a non-paying bidder (page 30). Official Notice is taken that granting and denying appeals of penalties is old and well known in the art. Furthermore, in the event an appeal is granted, it is old and well known in the art to reverse or undo the penalty. It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the teachings of eBay to include these steps because they are common sense steps in handling an appeal.

### ***Conclusion***

**Examiner's Note:** The prior art below are made of record and are not relied upon in this rejection. These references are considered pertinent to applicant's disclosure. The prior art references in the same field of endeavor as the instant application are:

1. Walker et al. United States Patent No. 6,415,264
2. Feedback Forum (herein referred to as NPL2)

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action.

Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Abhishek Vyas whose telephone number is 571-270-1836. The examiner can normally be reached on 7:30am-5:00pm EST Mon-Thur, ALT Friday OFF.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on 571-272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A. V.  
Examiner, Art Unit 3691

/Hani M. Kazimi/  
Primary Examiner, Art Unit 3691